

ESTTA Tracking number: **ESTTA542630**

Filing date: **06/10/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057116
Party	Defendant Darryl D. Agler
Correspondence Address	DARRYL D AGLER 1910 SPY RUN AVENUE FORT WAYNE, IN 46805 UNITED STATES dagler2@comcast.net
Submission	Answer
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Date	06/10/2013
Attachments	Answer to Cancellation- STRATOTONE.pdf(183804 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re U.S. Trademark Registration No. 3,986,754
For the Mark: STRATOTONE
Registered on: June 28, 2011

WESTHEIMER CORPORATION)	
)	
)	
Petitioner,)	Cancellation No.: 92057116
)	
v.)	
)	
DARRYL D. AGLER)	
)	
)	
Registrant.)	

ANSWER

Registrant, DARRYL D. AGLER, an individual residing at 5506 Quail Canyon Drive, Fort Wayne, Indiana 46835 (“Registrant”), by and through his undersigned counsel hereby answers the Petition for Cancellation of U.S. Registration No. 3,986,754 filed by WESTHEIMER CORPORATION (“Petitioner”) as follows:

1. Registrant denies the allegation contained in paragraph 1.
2. Registrant admits the allegation contained in paragraph 2.
3. Registrant is without sufficient information to admit or deny the allegation contained in paragraph 3 and therefore denies same.
4. Registrant is without sufficient information to admit or deny the allegation contained in paragraph 4 and therefore denies same.
5. Registrant is without sufficient information to admit or deny the allegation contained in paragraph 5 and therefore denies same.

6. Registrant admits the allegation contained in paragraph 6.

7. Registrant admits that Petitioner is listed on the U.S. Patent and Trademark Office's TSDR database as the applicant for U.S. Trademark Application No. 85/794,320 for the mark STRATOTONE for "guitars" in Class 15 filed on December 4, 2012.

8. Registrant declines to admit or deny the allegation contained in paragraph 8 because it makes a legal assertion, and the law speaks for itself.

9. Registrant declines to admit or deny paragraph 9 because it does not contain an allegation.

Ground I – Abandonment as a Result of Nonuse

10. Registrant maintains its admissions and denials as to the allegations contained in paragraphs 1-9, and incorporates same herein.

11. Registrant admits the allegation contained in paragraph 11.

12. Registrant denies the allegation contained in paragraph 12.

13. Registrant denies the allegation contained in paragraph 13.

14. Registrant denies the allegation contained in paragraph 14.

15. Registrant denies the allegation contained in paragraph 15.

16. Registrant denies the allegation contained in paragraph 16.

Ground II – Fraud

17. Registrant maintains its admissions and denials as to the allegations contained in paragraphs 1-16, and incorporates same herein.

18. Registrant denies the allegation contained in paragraph 18 insofar as Registrant's Mark at issue was not filed based on use in commerce; Registrant's

application (U.S. Application Serial No. 78/831,179) was filed on March 7, 2006 based on an intent to use the mark in commerce. Registrant admits that on March 29, 2011, he filed a Statement of Use alleging use of the mark in commerce.

19. Registrant denies the allegation contained in paragraph 19.

20. Registrant denies the allegation contained in paragraph 20.

21. Registrant denies the allegation contained in paragraph 21.

22. Registrant denies the allegation contained in paragraph 22.

Registrant declines to admit or deny paragraph 23 because it does not contain an allegation.

AFFIRMATIVE DEFENSES

Registrant asserts the following affirmative defenses:

First Affirmative Defense

24. Petitioner fails to state a claim upon which relief may be granted.

Second Affirmative Defense

25. Petitioner lacks standing.

Third Affirmative Defense

26. Upon information and belief, Petitioner is precluded by the doctrine of laches from cancelling U.S. Registration No. 3,986,754.

Fourth Affirmative Defense

27. Upon information and belief, Petitioner is precluded by the doctrine of acquiescence from cancelling U.S. Registration No. 3,986,754.

Fifth Affirmative Defense

28. Upon information and belief, Petitioner is precluded by the doctrine of

estoppel from cancelling U.S. Registration No. 3,986,754.

WHEREFORE, Registrant respectfully requests that this Petition for Cancellation be dismissed with prejudice.

Dated: June 8, 2013

Respectfully submitted,
FLEIT, GIBBONS, GUTMAN,
BONGINI & BIANCO P.L.

/Leticia Guerra/
Paul D. Bianco
Leticia Guerra

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ATTORNEY FOR REGISTRANT

CERTIFICATE OF SERVICE

Pursuant to C.R.F. § 2.1 11, I hereby certify that a true and complete copy of the foregoing Answer to the Petition for Cancellation has been served on counsel for Petitioner by mailing said copy on June 10, 2013, via First Class Mail, postage prepaid to:

Ronald S. Bienstock, Esq.
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/Leticia Guerra/
Leticia Guerra

FLEIT, GIBBONS, GUTMAN,
BONGINI & BIANCO P.L.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on the date shown below. I have been warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001), and may jeopardize the validity of this application, document, registration or patent resulting therefrom.

Date: June 10, 2013

BY: /Leticia Guerra/
Leticia Guerra